

BOARD of SUPERVISORS



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MEMORANDUM

TO: John Rahaim, Director, Planning Department
Anthony Valdez, Council Coordinator, Urban Forestry Council
Mohammed Nuru, Director, Public Works

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: September 19, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Sheehy on September 12, 2017:

File No. 170985

Ordinance amending the Public Works Code to implement Charter, Section 16.129 (Proposition E, November 2016) and generally provide that the City shall maintain Street Trees and be liable for injuries and property damage resulting from the failure to maintain Street Trees; amending the Subdivision Code to incorporate conforming changes regarding Street Tree maintenance; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: Erica.Major@sfgov.org.

c: Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Laura Lynch, Planning Department
David Steinberg, Public Works
Jeremy Spitz, Public Works
Jennifer Blot, Public Works
John Thomas, Public Works
Lena Liu, Public Works

1 [Public Works and Subdivision Codes - City Maintenance of Street Trees]

2
3 **Ordinance amending the Public Works Code to implement Charter, Section 16.129**
4 **(Proposition E, November 2016) and generally provide that the City shall maintain**
5 **Street Trees and be liable for injuries and property damage resulting from the failure to**
6 **maintain Street Trees; amending the Subdivision Code to incorporate conforming**
7 **changes regarding Street Tree maintenance; and affirming the Planning Department's**
8 **determination under the California Environmental Quality Act.**

9 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. CEQA Findings.

18 The Planning Department has determined that the actions contemplated in this
19 ordinance comply with the California Environmental Quality Act (California Public Resources
20 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
21 Supervisors in File No. ___ and is incorporated herein by reference. The Board affirms this
22 determination.

23 Section 2. The Public Works Code is hereby amended by revising Sections 706, 802,
24 803, 805, 806, 807, 809, 811, 812, and 813, and adding Section 805.1, to read as follows:
25

1 **SEC. 706. OWNERS OF FRONTAGE RESPONSIBLE FOR REPAIR – LIABILITY**
2 **FOR UNSAFE CONDITIONS.**

3 (a) It shall be the duty of the owners of lots or portions of lots immediately adjacent to
4 any portion of a public street, avenue, alley, lane, court, or place to maintain the sidewalks
5 and sidewalk area, including any parking strip, parkway, automobile runway, and curb,
6 fronting or adjacent to their property in good repair and condition. This duty shall include
7 removal of any unpermitted structure, including but not limited to unpermitted public pay
8 telephones installed in the sidewalk adjacent to the property. Any person who suffers injury or
9 property damage as a legal result of the failure of the owner to so maintain the sidewalks and
10 sidewalk areas shall have a cause of action for such injury or property damage against such
11 property owner. The City and County of San Francisco shall have a cause of action for
12 indemnity against such property owner for any damages it may be required to pay as
13 satisfaction of any judgment or settlement of any claim that results from injury to persons or
14 property as a legal result of the failure of the owner to maintain the sidewalks and sidewalk
15 areas in accordance with this subsection (a). Failure of the owner to maintain the sidewalks
16 and sidewalk areas as set forth in this subSection also shall constitute a public nuisance.

17 (b) **Sidewalk Revitalization Program.** A property owner may elect to participate in
18 the City's sidewalk revitalization program for fiscal year 2006-07 or any year thereafter during
19 which the program is renewed by providing written authorization to the Department to
20 undertake repairs to the sidewalk fronting the subject property. If the property owner elects to
21 participate in this program, the Department shall waive all permit and inspection fees related
22 to the sidewalk repair.

23 (c) **Street Trees.** Consistent with Charter Section 16.129, and notwithstanding subsection (a),
24 as of July 1, 2017, property owners do not have a duty to maintain street trees or portions of the public
25 right-of-way impacted by street trees' growth or root system, except as set forth in Article 16 of this

1 Code. As stated in Article 16, a property owner may be held liable for injury or property damage
2 occurring before July 1, 2017, and proximately caused by the failure to maintain street trees or a
3 portion of the public right-of-way impacted by street trees' growth or root system. Except as set forth
4 in Article 16, a property owner shall not be held liable for injury or property damage occurring on or
5 after July 1, 2017 and proximately caused by the failure to maintain street trees or a portion of the
6 public right-of-way impacted by street trees' growth or root system.

7
8 **SEC. 802. DEFINITIONS.**

9 Unless the context specifically indicates otherwise,

10 * * * *

11 "Injure" or "injury" shall mean any act which harms or damages a tree, including but not
12 limited to excessive pruning, impact, cutting, carving, painting, transplanting, or knocking over,
13 and includes but is not limited to the following: injurious attachment of any rope, wire, nail,
14 advertising poster, or other contrivance to any tree subject to the provisions of this Article 16;
15 intentionally or negligently allowing any gaseous, liquid, or solid substance that is harmful to a
16 tree to come into contact with a tree; setting fire or intentionally or negligently permitting any
17 fire to burn when such fire or the heat therefrom will injure any part of any tree; pruning which
18 in and of itself will kill or cause a tree to decline; or severing of all or part of a tree.

19 * * * *

20 "Maintenance" shall mean those actions necessary to promote the life, growth, health,
21 or beauty of a tree. Maintenance includes both routine and major activities. "Routine
22 Maintenance" shall include adequate watering to ensure the tree's growth and sustainability;
23 weed control; removal of tree-well trash; staking; fertilizing; routine adjustment and timely
24 removal of stakes, ties, tree guards, and tree grates; bracing; and sidewalk repairs related to
25 the tree's growth or root system ~~pursuant to Section 706 of this Code~~. "Major Maintenance" shall

1 include structural pruning as necessary to maintain public safety and to sustain the health,
2 safety, and natural growth habit of the tree; pest and disease-management procedures as
3 needed and in a manner consistent with public health and ecological diversity; replacement of
4 dead or damaged trees. Pruning practices shall be in compliance with International Society of
5 Arboriculture Best Management Practices and ANSI Pruning Standards, whichever is more
6 protective of tree preservation, or any equivalent standard or standards selected by the Director.

7 * * * *

8 "Street Tree" shall mean any tree growing within the public right-of-way, including
9 unimproved public streets and sidewalks, and any tree growing on land under the jurisdiction
10 of the Department. "Street Tree" does not include any other forms of landscaping.

11 "Tree" shall mean ~~any large perennial plant having a woody trunk(s), branches, and leaves.~~
12 ~~Trees also shall include palm trees~~ any perennial, woody or fibrous plant species of cultivar, which
13 reaches a height exceeding 10 feet at maturity, and which supports a branched or un-branched leaf
14 canopy.

15 * * * *

16 **SEC. 803. URBAN FORESTRY COUNCIL; ADDITIONAL POWERS AND DUTIES.**

17 (a) The Urban Forestry Council shall serve in an advisory capacity to the Director or
18 his or her designee on matters relating to this Article 16 and to tree management in the City.
19 The responsibilities of the Urban Forestry Council may include but shall not be limited to the
20 following:

21 * * * *

22 (8) Recommending to the Director information to be distributed to the public
23 concerning the selection, planting, and maintenance of trees throughout the City; ~~and~~

24 (9) Recommending to the Director desirable City tree programs and activities,
25 including legislation and funding mechanisms; ~~and~~.

1 (10) Reviewing the Annual Report prepared by the Department of Public Works Bureau
2 of Urban Forestry.

3 * * * *

4
5 **SEC. 805. RESPONSIBILITY FOR MAINTENANCE OF STREET TREES; LIABILITY**
6 **FOR FAILURE TO MAINTAIN STREET TREES.**

7 (a) ~~Responsibilities of Property Owners Maintenance.~~ Except as specified in subsection
8 (a)(1), the City shall as of July 1, 2017, have the duty to Maintain Street Trees, including Street Trees
9 planted before July 1, 2017. Property owners shall be responsible for the care and Maintenance of the
10 Sidewalk and Sidewalk areas adjacent to any Street Tree, other than the responsibility for Sidewalk
11 repairs related to the Tree's growth or root system, which shall be the responsibility of the City. The
12 Department shall develop and make available to interested persons, upon request or through its
13 website, public pruning standards to ensure that Street Trees receive proper care.

14 (1) Exceptions.

15 (A) If a private property owner plants a Street Tree, the City shall not be
16 responsible for the Street Tree's Maintenance until the Street Tree's establishment. The establishment
17 period for newly planted Street Trees shall be three years from the date of Planting. If the Street Tree
18 is not established three years from the date of Planting, the Director may treat this as an Injury to the
19 Tree, as defined in Section 802, and may seek penalties for violation, as set forth in Section 811.

20 (B) The City may enter into voluntary agreements with third parties for them to
21 assume responsibility for Street Tree Maintenance and may continue to abide by any such agreements
22 in existence as of the effective date of the ordinance in Board File No. _____ amending this Section
23 805. The requirements for such voluntary agreements are set forth in subsection (c) below.

24 ~~(1) Except as specified in Subsections 805(e) and (d) below, it shall be the duty owners~~
25 ~~of lots or portions of lots immediately abutting on, fronting on or adjacent to any Street Tree to~~

1 ~~maintain such Street Tree. This duty shall include both Routine and Major maintenance of the Street~~
2 ~~Tree. It shall be the responsibility of all public agencies, including City, State and federal agencies, to~~
3 ~~maintain Street Trees abutting on such public agency's property in accordance with this Section 805.~~
4 ~~In addition, and in accordance with Section 706 of this Code, abutting property owners shall be~~
5 ~~responsible for the care and maintenance of the Sidewalk and sidewalk areas adjacent to any Street~~
6 ~~Tree.~~

7 (2) (b) Liability. The respective liability of property owners and the City due to injuries or
8 property damage caused by the failure to Maintain Street Trees is as follows:

9 (1) Injuries or Property Damage that Occurred before July 1, 2017. Any person who
10 suffers injury or property damage before July 1, 2017, as a legal result of the failure of ~~the a~~
11 property owner to ~~so maintain~~ Maintain a Street Tree, ~~Sidewalk and sidewalk areas~~ shall have a
12 cause of action for such injury or property damage against such property owner. ~~In addition to~~
13 ~~its rights under Section 706 of this Code~~ For such injuries and property damage occurring before July
14 1, 2017, the City shall have a cause of action for indemnity against such property owner for
15 any damages the City may be required to pay as satisfaction of any judgment or settlement of
16 any claim that results from injury to persons or property as a legal result of the failure of the
17 property owner to ~~maintain~~ Maintain a Street Tree ~~in accordance with this Section 805.~~

18 (2) Injuries or Property Damage that Occurred after July 1, 2017. Any person who
19 suffers injury or property damage as the result of the failure to Maintain a Street Tree after July 1,
20 2017 may have a cause of action for such injury or property damage against the City.

21 (3) Exceptions. The City shall not be liable for any injuries or property damage
22 resulting from the failure to Maintain a Street Tree after July 1, 2017, in the following circumstances:

23 (A) If a private property owner plants a Street Tree, the City shall not be liable
24 for such injuries and property damage until the Street Tree's establishment. The establishment period
25

1 for newly planted Street Trees shall be three years from the date of Planting. Until the establishment of
2 a Street Tree, the adjacent property owner shall be liable.

3 (B) The City shall not be liable for such injuries and property damage if the City
4 has entered into voluntary agreements with third parties for them to assume responsibility for Street
5 Tree Maintenance. Third parties who have assumed responsibility for Street Tree Maintenance shall
6 be liable for any injuries or property damage resulting from their failure to Maintain Street Trees.

7 (C) The City shall not be liable for such injuries and property damage, if the
8 injuries or property were proximately caused by the adjacent property owner's failure to Maintain
9 Street Trees prior to July 1, 2017, before the City assumed its responsibility to Maintain.

10 (D) The City shall not be liable for such injuries and property damage if the
11 adjacent property owner fails to provide the City with adequate access to the property owner's lot for
12 the purpose of Maintenance; in such instances, the adjacent property owner may be liable for any
13 injury or property damage resulting from the failure to Maintain a Street Tree.

14 (3) The Department shall have available to interested persons, upon request, public
15 pruning standards to ensure that Street Trees receive proper care.

16 (b) ~~Permit Required for Major Maintenance of Street Trees Adjacent to General Advertising~~
17 ~~Signs.~~

18 (1) ~~The Department shall require a permit to perform Major Maintenance, as defined in~~
19 ~~Section 802, on any Street Tree within 150 feet of any portion of a general advertising sign, as defined~~
20 ~~in Planning Code Section 602.7. The Department shall issue such permit only to the owners of lots or~~
21 ~~portions of lots immediately abutting on, fronting on or adjacent to any such Street Tree unless the~~
22 ~~subject Tree is under the Maintenance responsibility of the Department, in which case the Department~~
23 ~~may perform the Major Maintenance itself.~~

1 ~~(2) Any permit for Major Maintenance of Street Trees specified in Section 805(b)(1)~~
2 ~~shall include a condition that the Maintenance work be conducted under the direct supervision of a~~
3 ~~certified arborist in accordance with this Article 16 and other standards that the Department adopts.~~

4 ~~(3) The fee for a permit for Major Maintenance of a Street Tree(s) specified in Section~~
5 ~~805(b)(1) shall be \$300.00. This fee is subject to the fee adjustment provisions of Section 2.1.2 and~~
6 ~~additional fee provisions of Section 2.1.3.~~

7 ~~(c) **Responsibilities of the Department.** The Department may, at the Director's discretion,~~
8 ~~determine to undertake the regular Routine and/or Major Maintenance of certain Street Trees or~~
9 ~~corridors of Street Trees to promote consistency in the Maintenance of Trees or in the public interest.~~
10 ~~Where the Department determines to undertake such regular Maintenance of Street Trees, the Director~~
11 ~~shall specify in writing by Departmental Order those Trees or corridors of Trees for which it has~~
12 ~~undertaken Maintenance responsibility and shall specify in writing whether the Department will be~~
13 ~~responsible for Routine or Major Maintenance, or both. Such determinations by the Department shall~~
14 ~~be readily accessible to property owners and members of the public. Where the Department has~~
15 ~~undertaken certain Maintenance responsibility for Street Trees in writing, the abutting property owner~~
16 ~~shall be relieved of responsibility for such Street Tree Maintenance.~~

17 ~~Where the Department assumes Maintenance responsibilities after the effective date of this~~
18 ~~Article 16, it shall send written notice of that fact to the abutting property owner.~~

19 ~~(d) **Street Tree Establishment and Replacement of Dead Street Trees.**~~

20 ~~(1) Establishment of Street Trees. The establishment period for newly planted Street~~
21 ~~Trees shall be three years from the date of Planting. If the Street Tree is not adequately established at~~
22 ~~the end of this period, the Director shall treat this as an Injury to the Tree, as defined in Section 802,~~
23 ~~and may seek penalties for violation, as set forth in Section 811. The Director may establish rules,~~
24 ~~regulations, or any other form of written guidelines concerning standards for proper care and~~
25 ~~Maintenance during the establishment period.~~

1 ~~(2) Replacement of Dead Street Trees. The permittee or agency responsible for a Street~~
2 ~~Tree shall replace a dead Street Tree within six months of the demise or Removal of the Tree. Removal~~
3 ~~of a dead Street Tree and Planting of a replacement Street Tree shall be subject to all requirements set~~
4 ~~forth in this Article 16 for Removal and Planting. The Director is authorized to waive this replacement~~
5 ~~requirement and may place conditions on any such waiver, which may include, but is not limited to,~~
6 ~~replacement Planting at an alternate location or payment of the In lieu fee. Any such waiver shall be~~
7 ~~in writing.~~

8 **(c) Voluntary Agreements for Street Tree Maintenance.**

9 **(1) General obligations. If any private party enters into a voluntary agreement with the**
10 **Department for Street Tree Maintenance, the agreement shall address, at a minimum, the following:**
11 **24-hour contact information for the Department and the private party, procedures for enforcing the**
12 **agreement and/or remedying its breach, and security to reimburse the Department for any enforcement**
13 **costs it incurs or any maintenance costs it incurs due to the private party's failure to Maintain Street**
14 **Trees.**

15 **(2) Development of Standard Voluntary agreements.**

16 **(A) Voluntary agreements by individual property owners. If an individual**
17 **property owner wishes to assume responsibility for Street Tree Maintenance, the property owner must**
18 **contact the Department and enter into an agreement that the Department develops regarding the**
19 **property owner's Maintenance responsibilities for the Street Tree adjacent to the property owner's lot.**
20 **The Department shall develop a standard voluntary agreement for individual property owners and**
21 **make it available on its website.**

22 **(B) Voluntary agreements by homeowner's associations, community benefit**
23 **districts, and other legal entities representing multiple property owners. If a homeowner's**
24 **association, community benefit district, or other legal entity representing multiple property owners**
25 **wishes to assume responsibility for Street Tree Maintenance, the entity must contact the Department**

1 and enter into an agreement that the Department develops for such Maintenance. The Department
2 shall develop a standard voluntary agreement for homeowner's associations, community benefit
3 districts, and other legal entities representing multiple property owners and make it available on its
4 website.

5 ~~(e) (d) Department Inventory and Publication of Street Tree Responsibilities. (1) The~~
6 Department shall use its best efforts to maintain an inventory of the location of all Street Trees
7 under its jurisdiction that it must Maintain. Such information shall be made available to the public
8 upon request.

9
10 ~~(2) As of the effective date of this Article 16, the Department shall continue to maintain~~
11 ~~Street Trees listed in its database as Department-maintained Trees. Such information shall be made~~
12 ~~available to the public upon request.~~

13 ~~(3) Within 120 days of the effective date of this Article 16, the Department shall publish~~
14 ~~in a newspaper of general circulation in the City a list of all Trees or corridors of Trees maintained by~~
15 ~~the Department.~~

16 ~~(f) Department Relinquishment of Street Tree Maintenance.~~

17 ~~(1) The Director may, in his or her discretion, determine to relinquish Tree~~
18 ~~Maintenance responsibilities for certain Trees or corridors of Trees. Prior to such relinquishment, the~~
19 ~~Director shall post the affected Trees and send Notice to abutting property owners of the Department's~~
20 ~~intent to relinquish Maintenance responsibilities on a date certain. Within 10 days of the posting and~~
21 ~~mailing of such Notice, any affected property owner may object in writing to such relinquishment. At~~
22 ~~the written request of any person, the Director shall hold a hearing prior to relinquishing Maintenance~~
23 ~~responsibility for a particular Tree or corridor of Trees. The Director's decision on such~~
24 ~~relinquishment shall be final and nonappealable.~~

1 ~~(2) Prior to relinquishing Maintenance responsibilities, the Department shall perform~~
2 ~~all necessary Major Maintenance. As of the date designated by the Director, all Tree Maintenance~~
3 ~~shall be the responsibility of the abutting property owner.~~

4
5 **SEC. 805.1. MAJOR MAINTENANCE OF STREET TREES ADJACENT TO GENERAL**
6 **ADVERTISING SIGNS.**

7 (a) If a property owner has entered into a voluntary agreement with the Department to assume
8 responsibility for the Maintenance of Street Trees, and a Street Tree subject to that agreement is within
9 150 feet of any portion of a general advertising sign (as defined in Planning Code Section 602.7), the
10 Department shall require a permit for the property owner to perform Major Maintenance on such
11 Street Tree.

12 (b) Any permit for Major Maintenance of Street Trees specified in subsection (a) shall include
13 a condition that the Maintenance work be conducted under the direct supervision of a certified arborist
14 in accordance with this Article 16 and other standards that the Department adopts.

15 (c) The fee for a permit for Major Maintenance of a Street Tree(s) specified in subsection (a)
16 shall be \$300. This fee is subject to the fee adjustment provisions of Section 2.1.2 and additional fee
17 provisions of Section 2.1.3.

18
19 **SEC. 806. PLANTING AND REMOVAL OF STREET TREES.**

20 **(a) Planting and Removal by the Department.**

21 * * * *

22
23 **(2) Removal of Street Trees.** ~~No Street Tree shall be cut down or removed by the~~
24 ~~Department unless:~~

1 ~~(A) The Department gives 30 days' prior written Notice to the owner of the~~
2 ~~property abutting the affected Tree; and~~

3 ~~(B) Thirty~~ The Department may not cut down or remove a Street Tree, unless 30
4 days prior to the Removal date, the Department notifies all Interested San Francisco
5 organizations and, to the extent practical, all owners and occupants of properties that are on
6 or across from the block face where the affected Tree is located. In addition, 30 days prior to
7 the Removal date, the Department shall post a notice on the affected Tree.

8 * * * *

9
10 **SEC. 807. DEPARTMENT OF PUBLIC WORKS URBAN FORESTRY PROGRAM;**
11 **POWERS AND DUTIES.**

12 (a) *Arterial Departmental Planting Program.* The Department shall continue its
13 program of appropriate street tree planting along major traffic routes and commercial streets
14 throughout the City.

15 (b) **Neighborhood Planting Program.** The Department shall continue to encourage
16 and support neighborhood planting programs. Support may include, but need not be limited
17 to, provision of trees and materials, sidewalk cutting and removal, planting labor, technical
18 advice, and organizational assistance. The Department is hereby authorized to donate such
19 funds, materials, and labor to neighborhood planting programs as are deemed by the Director
20 to be in the public interest and in the interest of the promotion of the urban forest.

21 (c) **Public Education.** The Department shall undertake an on-going program of public
22 outreach and education in order to promote public understanding of the City's urban forest
23 and public adherence to the standards and procedures established under this Article 16.

24 (d) **Authority over Site Development Plans.**
25

1 (1) The Department shall have the authority to review and comment on site
2 development plan applications received by the City's Central Permit Bureau that pertain to the
3 planting, alteration, or removal of street trees. The Department shall also have the authority
4 to review and comment on site development plan applications that pertain to the alteration or
5 removal of landmark trees designated pursuant to Section 810(a) of this Article 16 and
6 significant trees pursuant to Section 810A of this Article. Protection of such trees during
7 construction shall be required in accordance with Section 808(c) of this Article. Removal of
8 such trees shall be subject to the applicable rules and procedures for removal set forth in
9 Sections 806, 810, or 810A of this Article.

10 (2) If the ~~Zoning Administrator~~ Director modifies or waives the requirements of
11 ~~Section 806(d) in accordance with subsection 806(d)(4)Planning Code Section 138.1 pursuant to~~
12 ~~Planning Code Section 138.1(e)(1)(iii)~~, the Department shall impose an in-lieu fee ~~of on~~ the
13 property owner so excused. ~~Further, if a property owner is required to plant a street tree pursuant~~
14 ~~to Planning Code Section 138.1, the Department shall require that the property owner maintain such~~
15 ~~tree or replace any such tree that subsequently dies or is removed by any person, or pay an in-lieu fee.~~
16 ~~The Department shall follow the requirements set forth herein for tree replacement or payment of an~~
17 ~~in-lieu fee unless it makes written findings detailing the basis for waiving said requirements.~~

18 (e) Public Works Adopt-A-Tree Fund. Pursuant to Section 10.~~100-227117-77~~ of the
19 Administrative Code, the Department shall maintain ~~an~~ the Public Works Adopt-A-Tree Fund to
20 enhance the urban forestry program.

21 (f) In-Lieu Planting Program. The Department shall develop and implement an In-
22 Lieu Planting Program to offset the loss of street trees, significant trees, and landmark trees
23 due to removal, destruction, or death. The In-Lieu Planting Program also shall ~~also~~
24 compensate for the loss of trees required to be planted by Section 806(d), ~~unless the Director has~~
25 ~~modified or waived such requirements under subsection 806(d)(4)Section 138.1 of the Planning Code,~~

1 ~~yet excused by the Zoning Administrator pursuant to Planning Code Section 138.1(e)(1)(iii).~~ The
2 Department shall impose an in-lieu fee in accordance with a fee schedule adopted by the
3 Director where a street tree is destroyed, removed, or is excused from planting where
4 otherwise required by Section 806(d) Planning Code Section 138.1. The Department also shall
5 assess an in-lieu fee or such other penalty as set forth in Section 811 as mitigation for
6 violation of the requirements of this Article 16. The Department shall follow the requirements
7 set forth herein for payment of an in-lieu fee unless it makes written findings detailing the
8 basis for waiving said requirements. As set forth in Section 811, in lieu fees shall be
9 deposited in the Public Works Adopt-A-Tree Fund.

10 (g) **Tree Adoption Program.** The Department shall develop and implement a tree
11 adoption program to allow persons to donate money for the purpose of tree planting and
12 maintenance. Money donated to the City and County for the purpose of tree planting and
13 maintenance shall be deposited into the Public Works Adopt-A-Tree Fund.

14

15 **SEC. 809. HAZARD TREES; ABATEMENT.**

16 (a) ~~Notice to Property Owner(s).~~ Upon a finding by the Director that a ~~tree on private~~
17 ~~property or a street tree~~ Street Tree for which a ~~property owner private party~~ is responsible is a
18 "hazard tree" as defined herein, the Director shall provide notice to the ~~property owner(s)~~
19 ~~private party~~ which describes the condition creating the hazard, the actions required to be
20 taken to abate the hazard, and the date by which compliance must be completed. Required
21 action may include replacement or removal of the ~~tree~~ Street Tree in accordance with
22 applicable requirements and procedures provided in this Article 16 for its ~~removal of the subject~~
23 ~~tree~~. In cases of extreme danger, as determined by the Director, the Director may require
24 immediate compliance.

1 (b) **Director of Public Works ~~To~~ to Abate Hazard if Owner Fails ~~To~~ to Do So.** If the
2 responsible party property owner does not undertake in a timely manner the abatement action,
3 as required by said notice, the Director may perform necessary work to abate the hazard.
4 The cost of such abatement, including labor, equipment, materials, inspection services, and
5 administrative costs, shall be an obligation owing by the responsible party property owner(s) to
6 the City.

7 (c) **Method of Enforcement and Collection of Lien.** The Department shall send
8 notice of assessment of costs to the responsible party property owner. Such notice shall
9 include a statement that payment is due within 60 days of the mailing date of the notice. If a
10 responsible party property owner fails timely to remit payment, the Department shall send a
11 second notice of payment due. Such second notice shall include a statement that failure
12 timely to remit payment in full to the City within 30 days of the mailing of the second notice
13 shall cause the Director to pursue any and all remedies, including instituting institute lien
14 proceedings pursuant to Sections 706.4-706.7 of this Code. Enforcement and collection of
15 liens for costs associated with hazard tree abatement shall be in accordance with Sections
16 706.4-706.7 of this Code, except that all monies received in payment of such liens, with the
17 exception of enforcement costs incurred by any City department, shall be credited to the Public
18 Works Adopt-A-Tree Fund.

19
20 **SEC. 811. PENALTIES FOR VIOLATION OF ORDINANCE.**

21 * * * *

22 (c) **Administrative Penalties.**

23 * * * *

24 (4) **Hearings.** At the written request of any person who has been assessed a penalty
25 under subsections (c)(1)-(2), the Director, or the Director's designee, shall hold a public hearing

1 regarding the proposed penalty. The Director, or the Director's designee, must receive the written
2 request for a hearing within 60 days of the Department's notice of the assessed penalty. After the
3 public hearing, the Director's, or the Director's designee's, decision on the assessed penalty shall be
4 final.

5
6 **SEC. 812. ENFORCEMENT OF ORDINANCE; DESIGNATED EMPLOYEES.**

7 The Director shall authorize appropriate employees to issue citations to enforce the provisions
8 of this Article 16.

9 The classes of employees of the City set forth below shall have the duty of enforcing the
10 provisions of this Article 16 including, but not limited to, the unauthorized removal, Injury or
11 destruction of Street Trees, Significant Trees, or Landmark Trees:

<i>Classification No.</i>	<i>Class Title</i>
<i>3422</i>	<i>Park Section Supervisor</i>
<i>0922</i>	<i>Urban Forester (Manager I)</i>
<i>3434</i>	<i>Arborist Technician</i>
<i>3436</i>	<i>Arborist Technician Supervisor I</i>
<i>3435</i>	<i>Urban Forestry Inspector</i>
<i>5170</i>	<i>Superintendent, Street Environmental Services</i>
<i>0932</i>	<i>Assistant Superintendent, Urban Forestry (Manager IV)</i>
<i>7281</i>	<i>Street Cleaning Supervisor II</i>
<i>0941</i>	<i>Superintendent, Urban Forestry (Manager VI)</i>

22
23 **SEC. 813. URBAN FOREST MANAGEMENT PLAN.**

24 The Department shall use its best efforts to ensure that activities of the Department are
25 guided by the Urban Forest Management Plan entitled "Urban Forest Master Plan, Phase I.

1 Street Trees," adopted in 2015, or any superseding management plan "The Trees of San Francisco"
2 and adopted on April 16, 1991. The Department shall update and improve the Urban Forest
3 Management Plan as necessary, subject to approval by the Director.

4
5 Section 3. The Subdivision Code is hereby amended by revising Sections 1337, 1437,
6 1637, and 1737 to read as follows:

7 **SEC. 1337. BEAUTIFICATION.**

8 * * * *

9 (b) **Street Trees and Landscaping.** Trees planted along a public street, within the
10 right-of-way, and all landscaping within said right-of-way shall conform to the requirements of
11 Article 16 of the Public Works Code. In the case of all newly constructed subdivisions, the
12 subdivider shall provide street trees and landscaping conforming to the policies of the Master
13 Plan. Maintenance of said ~~trees and~~ landscaping shall be the responsibility of the abutting
14 property owners. Maintenance of street trees shall conform to the requirements of Article 16 of the
15 Public Works Code.

16 * * * *

17
18 **SEC. 1437. BEAUTIFICATION.**

19 * * * *

20 (b) **Street Trees and Landscaping.** Trees planted along a public street, within the
21 right-of-way, and all landscaping within said right-of-way shall conform to the requirements of
22 the Plans, Plan Documents, and Article 16 of the Public Works Code, to the extent consistent
23 therewith. In the case of all newly constructed subdivisions, the subdivider shall provide street
24 trees and landscaping conforming to the policies of the General Plan. Maintenance of Street
25

1 Trees shall also conform to the requirements of Article 16 of the Public Works Code. Provisions shall
2 be made for maintenance of said trees.

3 * * * *

4
5 **SEC. 1637. BEAUTIFICATION.**

6 * * * *

7 (b) **Street Trees and Landscaping.** Trees planted along a public street, within the
8 right-of-way, and all landscaping within said right-of-way shall conform to the requirements of
9 the Plan, Plan Documents, and Article 16 of the Public Works Code, to the extent consistent
10 therewith. In the case of all newly constructed subdivisions, the Subdivider shall provide
11 street trees and landscaping conforming to the policies of the General Plan, Plan, and Plan
12 Documents. Maintenance of Street Trees shall also conform to the requirements of Article 16 of the
13 Public Works Code. Provisions shall be made for maintenance of said trees.

14 * * * *

15
16 **SEC. 1737. BEAUTIFICATION.**

17 * * * *

18 (b) **Street Trees and Landscaping.** Trees planted along a public street, within the
19 right-of-way, and all landscaping within said right-of-way shall conform to the requirements of
20 the Project Document and City Regulations, including Article 16 of the Public Works Code to
21 the extent that Article 16 is consistent with the Project Documents. In the case of all newly
22 constructed subdivisions, the Subdivider shall provide street trees and landscaping
23 conforming to the policies of the Project Documents and City Regulations. Maintenance of
24 Street Trees shall also conform to the requirements of Article 16 of the Public Works Code. Provisions
25 shall be made for maintenance of said trees.

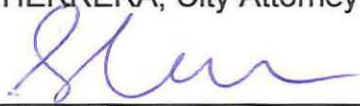
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Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 

ANDREW SHEN
Deputy City Attorney

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LEGISLATIVE DIGEST

[Public Works and Subdivision Codes - City Maintenance of Street Trees]

Ordinance amending the Public Works Code to implement Charter Section 16.129 (Proposition E, November 2016) and generally provide that the City shall maintain Street Trees and be liable for injuries and property damage resulting from the failure to maintain Street Trees; amending the Subdivision Code to incorporate conforming changes regarding Street Tree maintenance; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

The Public Works and Subdivision Codes currently provide that, as a general matter, the maintenance of street trees (trees growing in sidewalks or public rights-of-way) is the responsibility of adjacent property owners. These Codes also generally provide that if a person suffers an injury as a result of the failure to maintain street trees, and the surrounding sidewalk impacted by the trees' roots, the adjacent property owner is liable for the injury.

At the November 2016 election, the voters approved Proposition E, which largely shifts the responsibility for the maintenance of street trees to the City, as of July 1, 2017. Under Proposition E, private property owners would continue to abide to previously existing obligations regarding the establishment, relocation or removal of street trees. Proposition E also provides that the City may enter into voluntary agreements with private parties to assume responsibility for the maintenance of street trees.

Proposition E also makes the City, after July 1, 2017, generally liable for injuries proximately caused by the failure to maintain street trees. But under Proposition E, the City would not be liable for such an injury, if the injury resulted from the adjacent property owner's failure to maintain street trees prior to July 1, 2017.

Amendments to Current Law

The proposed legislation implements Proposition E's changes to City law, which generally require the City to maintain street trees as described above, in the Public Works and Subdivision Codes. For the Public Works Code, the amendments are generally found in Article 16, the City's Urban Forestry Ordinance.

In particular, the proposed legislation would specify:

- the City will not have the duty to maintain street trees, until they have been established;

- minimum requirements for the voluntary agreements that the City could enter into with private parties for maintenance of street trees; and
- under the proposed amendments to the Subdivision Code, the subdivider's responsibilities with respect to the maintenance of street trees would be subject to the Urban Forestry Ordinance.

The proposed legislation also explicitly establishes an appeal process for administrative penalties levied by Public Works for violations of the Urban Forestry Ordinance.

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